

BOARD OF DESIGN REVIEW MINUTES

June 26, 2003

CALL TO ORDER: Vice-Chairman Hal Beighley called the meeting to order at 6:35 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL: Present were Vice-Chairman Hal Beighley; Board Members Jennifer Shipley, Stewart Straus, and Jessica Weathers. Chairman Mimi Doukas and Board Members Cecilia Antonio and Ronald Nardoza were excused.

Senior Planner John Osterberg, Assistant Planner Leigh Crabtree, and Recording Secretary Sandra Pearson represented staff.

APPROVAL OF MINUTES:

The minutes of May 22, 2003, as written, were submitted. Vice-Chairman Beighley asked if there were any changes or corrections. Mr. Straus **MOVED** and Ms. Shipley **SECONDED** a motion that the minutes be adopted as written and submitted.

The question was called and the motion **CARRIED** unanimously, with the exception of Ms. Weathers, who abstained from voting on this issue.

VISITORS:

Vice-Chairman Beighley read the format for the meeting and asked if any member of the audience wished to address the Board on any non-agenda item. There was no response.

NEW BUSINESS:

PUBLIC HEARINGS:

Vice-Chairman Beighley opened the Public Hearing and read the format of the hearing. There were no disqualifications of Board Members. No one in the audience challenged the right of any Board Member to hear any agenda items or participate in the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda.

1. ODOT HALL BOULEVARD TURN LANE**A. DR 2003-0037 – DESIGN REVIEW****B. SDM 2003-0005 – STREET DESIGN MODIFICATION**

The applicant requests Design Review and Street Design Modification for the addition of a right turn lane along southeast bound SW Hall Boulevard at the intersection of SW Scholls Ferry Road and associated improvements to non-standard City of Beaverton arterial street cross-section standards. The proposal will provide a separate lane dedicated to motor vehicles that turn right onto the southwest bound SW Scholls Ferry Road, which will exclude construction of the 7-½-foot wide planter strip. A portion of the proposed turn lane is outside of the existing right-of-way thereby impacting properties that abut the existing right-of-way.

Ms. Shipley indicated that she had visited the site.

6:53 p.m. – Sandy VanBemmel, representing the Oregon Department of Transportation (ODOT), arrived.

Associate Planner Leigh Crabtree presented the Staff Reports and briefly described the two applications associated with this proposal. Concluding, she recommended approval of both applications and offered to respond to questions.

Mr. Straus requested clarification with regard to where the planter strip is normally located and whether any other planter strip is located along SW Hall Boulevard at this time.

Ms. Crabtree advised Mr. Straus that the planter strip is generally located between the curb and the sidewalk, adding that there is currently no planter strip along SW Hall Boulevard.

APPLICANT:

Observing that she is late because she had gotten lost, **SANDY VanBEMMEL**, Project Manager for ODOT, briefly described the proposal and discussed the necessity of this project. She explained that a planter strip would eventually be provided, noting that in an effort to compensate for the trees that would be removed, another ODOT project within the City of Beaverton would involve planting additional trees in the City limits, and pointed out that the constraints of this specific site make it difficult to address this issue at this site.

Ms. Shipley questioned whether the number of parking spaces would remain the same.

Ms. VanBemmel informed Ms. Shipley that the proposal would eliminate only one handicapped parking space, adding that other routes have been determined for entering the *Big and Tall Shop*. She pointed out that the owner of the parking lot

has been actively involved in the entire process, observing that he had been offered the option of two different schemes.

PUBLIC TESTIMONY:

MIKE GRAY, minority owner of BCTI and Property Manager of *Big and Tall Shop*, mentioned that he had submitted a letter, dated June 11, 2003, which had been incorporated into both Staff Reports. He pointed out that replacing a handicapped parking space would involve the same amount of space as two regular parking spaces.

Ms. Crabtree explained that when a jurisdiction determines that condemnation is appropriate in order to achieve right-of-way work, it is not permitted to consider impacts and issues that are off-site or beyond the proposed right-of-way.

Observing that there appears to be several inconsistencies, Senior Planner John Osterberg suggested that the applicant be provided with an opportunity to address this.

Mr. Straus noted that he would like the property owner to indicate his preference, adding that there should be a Condition of Approval that stipulates which of the two options would be utilized.

Mr. Osterberg disagreed with Mr. Straus, noting that the alternative design with regard to what should occur on this private parking lot is not before the Board of Design Review. He emphasized that the issue at this time involves only the review of the area to be condemned for the proposed right-of-way, adding that while it is frustrating to not be able to look beyond the edge of the proposed right-of-way with regard to this situation, the City Attorney has determined that this is not something the Board has the authority to review.

Mr. Straus pointed out that he is not certain that this is entirely the situation involved at this time, adding that there is no way to determine where public right-of-way ends and private property begins.

Mr. Osterberg agreed that while the plans were not clear, alternatives had been submitted as background information for purposes of clarification.

Mr. Straus noted that a portion of these two alternatives include public right-of-way, adding that it should be necessary to determine which is appropriate.

Mr. Osterberg advised Mr. Straus that this should be clarified by the applicant, who could describe issues involved with each option.

Mr. Straus pointed out that there should be some documentation indicating the location of the public right-of-way line.

Mr. Osterberg explained that the applicant should address this issue as well.

APPLICANT REBUTTAL:

Observing that the plan sheets illustrate two different versions, Ms. VanBemmel noted that one version includes extra parking spaces resulting from conversations with ODOT's right-of-way agent and the property owner. She pointed out that the 34 parking spaces on Version "A" are located on the property owner's property, adding that this version is preferred by ODOT, although the property owner has indicated a preference for Version "B", noting that the parking spaces along Highway 217 involve ODOT right-of-way, which he is currently utilizing for parking. She pointed out that these parking spaces would be lost in the event that Highway 217 is widened, adding that the reason for the difference involves the property owned by ODOT and property owned by the property owner.

Mr. Straus emphasized that the difference between Version "A" and Version "B" has no connection with the parking that is in the ODOT Highway 217 right-of-way, and explained that it is necessary for the property owner to know how many parking spaces he is entitled to on his own property under each version.

Ms. Van Bemmel stated that this is correct except that ODOT is accommodating the request of the property owner.

Mr. Straus pointed out that ODOT can not accommodate the property owner's request by including parking that he uses but does not own. He expressed concern with making a decision based on information that does not consider relevant, emphasizing that no information has been provided with regard to which of the two schemes would be utilized. Observing that the property owner's business is most likely dependent upon the availability of a certain amount of parking, he expressed his opinion that it is reasonable to expect that he would be able to utilize the maximum amount of parking possible within his own property.

Noting that this is why ODOT had retained an architect to address the schematics, Ms. Van Bemmel added that the property owner is losing only one parking space.

Mr. Straus advised Ms. Van Bemmel that this one parking space is on the property owned by the property owner and does not involve the parking within the ODOT right-of-way. He emphasized that if this parking is not included in Scheme "A", it should not be included in Scheme "B" either.

Ms. VanBemmel clarified that while these parking spaces are not included in the count, they do exist.

Mr. Straus reiterated that this parking should be identical in both schemes and that 20 parking spaces should be eliminated from Scheme "B", emphasizing that these schemes should be consistent. He explained that the relevant information

involves an addition of one parking space in Scheme “A” and the deletion of one parking space in Scheme “B”, adding that additional parking could potentially be lost in order to provide adequate space for maneuvering. He suggested a Condition of Approval that would ensure that the property owner does not lose additional parking at some point in the future, and expressed concern that ODOT would not have any obligation to give the property owner any choice.

Ms. VanBemmel advised Mr. Straus that ODOT has no obligation to give the property owner any choice under any circumstance, noting that ODOT had gone above and beyond what is required.

Mr. Osterberg interjected that the striping and circulation of this private parking lot is not the issue before the Board, adding that the application being considered at this time involves the design of a street improvement and whether or not this particular street improvement should or should not be required to meet normal City standards established for arterial streets. He pointed out that the geographic boundaries with regard to the design review involve only the street area, specifically the area within the existing and proposed right-of-way.

Mr. Straus noted that compatibility, appropriate circulation, and other issues are normally addressed through the design review and expressed his opinion that any potentially adverse impact on the adjacent properties should be considered.

Observing that he understands Mr. Straus’ rationale, Mr. Osterberg stated that the applicant had submitted the alternative drawings for the purpose of background information and to indicate that they are providing a design effort in the area that is beyond the right-of-way. He expressed his concern that these drawings may have created more confusion than clarification.

Mr. Straus mentioned that he anticipates that at some point in the future, the property owner would be submitting an application for parking lot modifications.

Mr. Osterberg pointed out that this same discussion has occurred in the past, noting that any governmental entity proposing a condemnation procedure for a street widening project becomes involved in certain negotiations.

Mr. Straus explained that this property owner would later be obligated to submit an application for design review for a redesigned parking lot.

Mr. Osterberg advised Mr. Straus that he believes that this depends upon the outcome of the negotiations between ODOT and the property owner. He pointed out that the City of Beaverton is not able to compel a private property owner to submit a land use application in order to make his property whole, adding that this is addressed through State Condemnation Law.

Observing that more than re-striping is involved, Mr. Straus emphasized that the property owner's parking lot could be non-conforming unless he goes through a design review process.

Ms. VanBemmel stated that ODOT would not be addressing this issue, adding that the property owner would receive compensation for both the re-striping and planting strip and that it is up to him to determine whether or not to re-stripe.

Mr. Straus noted that there is no way to determine where public right-of-way ends and private property begins, adding that the key point is that either scheme must demonstrate that there is adequate space for a parking lot. He pointed out that regardless of any negotiations between the property owner and ODOT, the property owner needs to be aware that additional improvements might become necessary at some point in the future, emphasizing that a parking lot that meets City standards can be accommodated.

Mr. Osterberg advised Mr. Straus that a parking lot design associated with a condemnation proceeding is not required to meet City standards.

Mr. Straus mentioned that this information has not been provided to the Board.

Mr. Osterberg observed that requiring the owner to provide a design that meets City standards would be considered an unfair imposition on a property owner. He explained that through condemnation, although the resulting parking lot might not meet Code standards, it would be functional and meet minimum safety and circulation standards.

Vice-Chairman Beighley advised Mr. Gray that alternative plans are options provided by the State to illustrate how it could work, emphasizing that he must determine how to utilize the compensation he had received for the property.

Mr. Gray pointed out that if he had not attended this meeting, the Board would mistakenly think the situation was hunky-dory, emphasizing that this is not the case. He mentioned that although Ms. VanBemmel may have been handed a script, he has not discussed either of these alternative parking lot plans with anyone from ODOT, adding that he has been unable to obtain adequate information. He explained that he is merely requesting a delay in order to provide adequate time for his architect to line up the existing plan with the two options and provide an informed comment.

Vice-Chairman Beighley questioned whether the property owner has the option of requesting a continuance due to a lack of communication exists.

Observing that the property owner is not the applicant, Mr. Osterberg explained that the Development Code had been recently amended to allow for local governments utilizing the condemnation procedure to act as the applicant to

submit a proposal to the Board of Design Review or Planning Commission. He pointed out that only the applicant can request a continuance, which is the State of Oregon, in this specific case.

Mr. Straus mentioned that the opening statements for a Public Hearing provide the opportunity for anyone, not just the applicant, to request a continuance.

Mr. Osterberg agreed that anyone can request a continuance, adding that this continuance would be up to the discretion of the Board of Design Review. Pointing out that it is not the responsibility of the Board to review the negotiations between the State of Oregon and the property owner, he noted that this has nothing to do with the design of the street, which is the subject of this proposal.

Mr. Straus noted that while landscaping would normally be required in the public right-of-way, the Board is being asked to eliminate this requirement with regard to this proposal and that ODOT would provide mitigation elsewhere in the City.

Ms. VanBemmel discussed the removal of four trees along the *Taco Bell* property, as well as some of the trees along the BCTI property pointing out that this does not meet threshold for separate Tree Plan application. She confirmed Mr. Straus' statement that any landscaping would be provided on private property and that mitigation for removal of the existing landscaping is not required at this location. She explained that ODOT is not requesting approval for mitigation or off-site landscaping with this application, noting that it has not been required or proposed due to the condemnation proceeding.

Mr. Straus expressed concern that the State of Oregon would not be obligated to provide appropriate landscape or tree mitigation.

Mr. Osterberg advised Mr. Straus the Board could request the applicant to provide additional mitigation and return with a revised proposal for specific landscape and/or tree mitigation that would be located in the right-of-way either at this location or elsewhere.

Mr. Straus requested clarification with regard to the width of the sidewalk.

Ms. VanBemmel noted that the sidewalk is slightly greater than six feet in width.

Mr. Straus questioned whether there would be adequate room to provide trees and tree wells with grates.

Mr. Osterberg observed that there might be adequate room for trees and tree wells with grates, noting that the Board is actually reviewing ODOT's ability to conform to City of Beaverton standards. He explained that the Street Design Modification is a request to provide something other than the normal City improvement standard for an arterial street, adding that while the City of

Beaverton has concurred with this proposal, the Board might feel that ODOT's proposal does not provide adequate landscape buffering or street trees.

Mr. Straus questioned whether the City of Beaverton would be this lenient if this proposal had been submitted by a private developer rather than the State of Oregon, emphasizing that the expectations of various applicants should be equal. He pointed out that mitigation elsewhere in the City would not create a better situation at this particular intersection, adding that the Board would not normally be requested to approve such a proposal.

Mr. Osterberg emphasized that street design issues are unique and that the Board may consider the street tree and tree mitigation in this application.

Observing that she agrees with comments made with regard to landscaping, Ms. VanBemmel pointed out that while these City standards were created for development, this issue involves a transportation project, rather than a development. She noted that it is necessary to comply with Federal standards, including the six-foot sidewalks, adding that landscaping would involve the condemnation of additional property, which would create a tremendous negative impact on the businesses that are located in this area. She expressed her opinion that ODOT has made every effort to work with the property owner, adding that he has no obligation and does not need a continuance to hire an architect. She explained that ODOT is not required to plant trees elsewhere, adding that planting trees at this location would actually restrict vision and create an additional safety hazard. Noting that accidents are occurring now at a very high rate, she emphasized that it is necessary to take action to make this intersection safer.

Mr. Straus questioned whether there are street lights along the right turn lane.

Ms. VanBemmel advised Mr. Straus that there is a luminare along SW Scholls Ferry Road and another along SW Hall Boulevard.

Mr. Straus suggested that flower baskets hanging on poles might provide an adequate form of mitigation, expressing his opinion that there has been no attempt to consider other alternatives.

Ms. VanBemmel clarified that ODOT is not attempting to get away with anything, emphasizing that there have been several meetings with Ms. Crabtree, Senior Planner Colin Cooper, and Community Development Director Joe Grillo. She assured the Board that various options have been considered, adding that this is the solution that has been worked out with the City of Beaverton.

Reiterating his request for a continuance, Mr. Gray emphasized that he controls 75% of the ownership of the property involved in this proposal, emphasizing that he has not been contacted by ODOT.

Mr. Straus informed Mr. Gray that this action before the Board does not involve what is occurring elsewhere on his property, noting that some of the documentation provided by ODOT has been informational in nature.

Ms. VanBemmel advised Mr. Gray that he does not need a continuance, adding that the re-striping is up to him and does not involve ODOT, adding that it is not necessary for him to submit his architect's plan to ODOT.

Vice-Chairman Beighley pointed out that this involves what he referred to as a unique project and expressed his appreciation to both Ms. VanBemmel and Mr. Gray for their participation.

The public portion of the Public Hearing was closed.

Expressing her opinion that this proposal involves a terrible intersection, Ms. Shipley adding that the design of the right turn lane is a necessary element and it appears to have been done by taking as little property as possible, and also believes that a continuance would not serve a purpose because the matter before the Board would not change in its design if a continuance was granted.

Ms. Weathers concurred with Ms. Shipley's statements.

Mr. Osterberg noted that he has no further comments and offered to respond to final questions.

Mr. Straus questioned the possibility of approving a potential continuance without obtaining concurrence from the applicant.

Mr. Osterberg explained that the Board has the option of making a finding determining that an additional hearing is necessary, adding that it would be typical to indicate the purpose of the continuance in order to provide the applicant with direction with regard to obtaining additional information.

Observing that the need for the right hand turn lane at this location has been documented, Vice-Chairman Beighley noted that it is unfortunate that ODOT standards are not the same as the standards of the City of Beaverton, but that he is reasonably comfortable with the proposal without a continuance.

Ms. VanBemmel expressed her concern that the property owner does not feel that there has been an adequate amount of communication, noting that there would not be a great deal of parking lost and that the property owner would receive monetary compensation for the loss of the landscaping. She pointed out that a continuance would not change the situation.

Mr. Straus noted that although he will vote for approval, he hopes that the compensation provided to the property owner is adequate to accommodate for

both the loss of land and the loss of landscaping that was previously public right-of-way.

Mr. Straus **MOVED** and Ms. Shipley **SECONDED** a motion to **APPROVE** SDM 2003-0005 – ODOT Hall Boulevard Turn Lane Street Design Modification, based upon the testimony, reports and exhibits presented during the public hearings on the matter and upon the background facts, findings and conclusions found in the Staff Report dated June 19, 2003, including Conditions of Approval Nos. 1 through 3.

Motion **CARRIED**, by the following roll call vote:

AYES: Straus, Shipley, Weathers, and Beighley.
NAYS: None.
ABSTAIN: None.
ABSENT: Antonio, Doukas, and Nardozza.

Mr. Straus **MOVED** and Ms. Shipley **SECONDED** a motion to **APPROVE** DR 2003-0037 – ODOT Hall Boulevard Turn Lane Type 3 Design Review, based upon the testimony, reports and exhibits presented during the public hearings on the matter and upon the background facts, findings and conclusions found in the Staff Report dated June 19, 2003, including Conditions of Approval Nos. 1 through 5.

Motion **CARRIED**, by the following roll call vote:

AYES: Straus, Shipley, Weathers, and Beighley.
NAYS: None.
ABSTAIN: None.
ABSENT: Antonio, Doukas, and Nardozza.

MISCELLANEOUS BUSINESS:

The meeting adjourned at 8:25 p.m.